

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PAUL WEISHAAR, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

O'REILLY AUTOMOTIVE STORES, INC.,

Defendant.

Case No.: 4:17-cv-02384-AGF

Jury Trial Demanded

DEFENDANT O'REILLY AUTOMOTIVE STORES, INC.'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant O'Reilly Automotive Stores, Inc. ("O'Reilly" or "Defendant") moves to dismiss Plaintiff Paul Weishaar's Petition for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). As more fully explained in the accompanying memorandum of law, the Petition fails to satisfy Rule 9(b)'s pleading requirements, no reasonable consumer would be deceived by the claim "down to -20 degrees Fahrenheit," and Weishaar has not plausibly alleged that he suffered any ascertainable loss. In the alternative, O'Reilly moves to dismiss pursuant to Rule 12(b)(1) because Weishaar lacks standing to bring any claims for products that he did not purchase.

WHEREFORE, Defendant O'Reilly Automotive Stores, Inc. respectfully requests that this Court grant its Motion to Dismiss, dismiss the Petition in its entirety with prejudice, and order such other and further relief as this Court deems just and proper.

Dated: September 15, 2017

Respectfully submitted,

HEPLERBROOM LLC

By: /s/ W. Jason Rankin

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*Counsel for the Defendant O'Reilly Automotive
Stores, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2017, a true and correct copy of the foregoing document was served upon the following Counsel of Record via the Court's electronic notification system, electronic mail, and/or U.S. Mail, postage prepaid:

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Attorneys for Plaintiff

/s/ W. Jason Rankin